

REMARKS

Claims 8-9 and 15-33 have been canceled without prejudice to Applicants right to pursue the subject matter of the canceled claims in subsequently filed continuing and/or divisional applications. Claims 35, 38, 39 and 40 have been amended. Support for the amended claims can be found throughout the specification and claims as filed. No new matter has been added. Claims 35-40 are pending and at issue. Applicants request entry of the present amendment.

Rejections under 35 U.S.C. §103

Claims 35-40 stand rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Osteryoung in view of Heifetz and Maliga. While Applicants respectfully traverse this rejection, it is submitted that the amendments to claims 35 and 39 place the pending claims in condition for allowance.

Claims 35 and 39 have been amended to delete any reference to "MinD." Applicants note that the amendments to claims 35 and 39 were made in order to expedite prosecution of the pending claims and should not be interpreted as a general disclaimer of the territory between the original claim and the amended claim. Applicants intend to pursue such subject matter in claims presented in subsequently filed continuing and/or divisional applications.

With regard to amended claims 35 and 39, the cited references alone or in combination fail to teach or suggest a cell or method that utilizes or contains an exogenous nucleic acid sequence encoding an Arabidopsis thaliana "MinE" polypeptide. Absent any such teaching or suggestion there can be no expectation of success of obtaining a cell as claimed in claim 35 or performing a method as claimed in claim 39.

In light of the above discussion and in view of the amendments to the claims, Applicants request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Conclusion

In summary, for the reasons set forth herein, Applicants maintain that claims 35, 36, 37, 38, 39 and 40 clearly and patentably define the invention. Applicants request that the Examiner reconsider and withdraw the various grounds for rejection set forth in the Office Action.

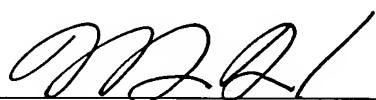
If the Examiner would like to discuss any of the issues raised in the Office Action, Applicants' representative can be reached at (703) 836-6620. Enclosed herewith is a request for a two-month extension of time, along with the required fee. Should any additional fees be required, the Commissioner is authorized to charge deficiencies or credit any overpayment to Deposit Account No. 02-4800.

Respectfully submitted,

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